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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/637,201	08/08/2003	Rosalyn J. Williams	DAP/580P2	4097
26875	7590	08/25/2005	EXAMINER	
WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			PRICE, CRAIG JAMES	
			ART UNIT	PAPER NUMBER
			3754	

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/637,201	Applicant(s) WILLIAMS ET AL.	
	Examiner Craig Price	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/08/2003</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 23,25 and 26 are objected to because of the following informalities: the claimed limitation "the flexible nozzle extension" in claims 23,25 and 26 in line 1 lacks insufficient antecedent basis. Appropriate correction is required.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the claimed subject matter in claim 15, lines 2-4, states, "said diameter of said flange is less than said exterior diameter of said cartridge," must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New

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Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1,3,4,5,6,10,11,12,16, and 22 are rejected under 35 U.S.C. 102 (b) as being anticipated by Jackson et al. (5,137,184).

Regarding claim 1, Jackson et al. (5,137,184) disclose an apparatus, as seen in Figure 1, for adjusting the dispensation of material from a container (15) when the container is supported by a dispenser (22,23), which comprises of a tube (40) having an inner diameter (internal to 43 and 44), a proximal end portion (perpendicular surface close to 46) and a distal end portion (the leftmost end in Figure 2), where the proximal end portion adapted to receive the material from the container, the distal end portion adapted to dispense the material, a flange (41) attached to the proximal end portion (near 46) of the tube, the flange operably sandwiched between the container and the dispenser, as seen in Figure 2, the flange (41) adapted to keep the apparatus in contact with the container during the dispensation of the material from the container, and a raised seal (46 projected from 41) having a perimeter, the seal is attached to the flange,

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the seal is adapted to seal the apparatus (40) against the container (15) during the dispensation of the material from the container.

Regarding claim 3, Jackson et al. (5,137,184) disclose an inner diameter (internal to 42 and 43) of the tube (40), which is sized to operably permit at least a portion of the container to be positioned within the tube, as seen in Figure 2.

Regarding claim 4, where the tube has a variable inner diameter, as seen in Figure 2.

Regarding claim 5, the tube is tapered, as seen in Figure 2.

Regarding claim 6, Jackson et al. (5,137,184) disclose the proximal end portion (perpendicular surface close to 46), as seen in Figures 2 and 3, of the tube is wider than the distal end portion (leftmost portion of Figure 2) of the tube.

Regarding claim 10 and 15 Jackson et al. (5,137,184) disclose a flange that has a diameter (internal to 41) and the container (22) has an exterior diameter, and wherein the diameter of the flange is less than the exterior diameter of the container, as seen in Figure 2.

Regarding claim 11, Jackson et al. (5,137,184) disclose a seal that is a raised ring (46, as seen in Figure 3) that extends away from the flange (41) and away from the proximal end portion of the tube (near 46).

Regarding claim 12 and 16, Jackson et al. (5,137,184) disclose that the flange (41) has a diameter and the seal has an exterior diameter (near 47, as seen in Figure 3), and wherein the diameter of the flange is greater than the exterior diameter of the seal.

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Regarding claim 22, Jackson et al. (5,137,184) disclose an elongated tube (40) having inner and outer diameters (inner and outer diameters of 42,43) and proximal (near 46) and distal ends (leftmost end in Figure 2), a flange (41) projecting radially outwardly of the tube adjacent to the proximal end thereof and having an upper surface (perpendicular to flange diameter 46, adjacent to 36) facing toward the tube distal end and a lower surface facing away from the tube distal end, and an annular sealing ring (perpendicular to 46) mounted on the lower surface of the flange and projecting away therefrom, as seen in Figure 3.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 7, 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson et al. (5,137,184) in view of Zimmerman (3,235,133).

Jackson et al. have taught all of the features of the claimed invention except that

the flange is comprised of a plurality of radially extending arms, in which the flange is scalloped and having a plurality of concave portions. Zimmerman teaches the use of a nozzle (28) having a flange (34), which has a plurality of radially extending arms (36), and where the radially extending arms are scalloped, as seen in Figure 2.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the flange of Jackson et al. (41) to have a plurality of radially extending arms, as taught by Zimmerman (3,235,133) in (col.2, ll. 41-46), in order to provide a flange, for ease of gripping.

7. Claims 13,14,15,17-21 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson et al. (5,137,184) in view of Zimmerman (3,235,133) and Boaz et al. (5,833,099).

Jackson et al. have taught all of the features of the claimed invention except that the flange is comprised of a plurality of radially extending arms that are scalloped, and have concave portions, where the concave portions of the scalloped flange do not inwardly extend inside the perimeter of the seal ring, and the tube is flexible.

Zimmerman discloses a nozzle (28) with a flange (34), where the outermost diameter of the flange, contains the plurality of radially scalloped concave portions (36). Boaz et al. teach the use of a flexible caulking nozzle (14c) (col.1, ll. 5-16).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the flange of Jackson et al. to have the plurality of radially scalloped concave portions as taught by Zimmerman in Figure 2, and in (col.2, ll. 41-46), in order to provide a flange for ease of gripping.

Further, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the nozzle of Jackson et al. and Zimmerman to be flexible, as taught by Boaz et al. in (col. 1, ll. 5-16), in order to provide a nozzle which functions to allow directionally dispensing caulking compound.

8. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson et al. (5,137,184) in view of Boaz et al. (5,833,099).

Jackson et al. have taught all of the features of the claimed invention except that the tube is flexible. Boaz et al. teach the use of a flexible caulking nozzle (14c) (col. 1, ll. 5-16).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the nozzle of Jackson et al. to be flexible, as taught by Boaz et al. in (col. 1, ll. 5-16), in order to provide a nozzle which functions to allow directionally dispensing caulking compound.

9. Claims 23-26, are rejected under 35 U.S.C. 103(a) as being obvious over Jackson et al. (5,137,184) in view of Zimmerman (3,235,133) and Boaz et al. (5,833,099).

Jackson et al. disclose all of the features of the claimed invention except that the flange is comprised of a plurality of radially extending arms that are scalloped, and have concave portions, where the concave portions of the scalloped flange do not inwardly extend inside the perimeter of seal. Zimmerman discloses a nozzle (28) with a flange (34), where the outermost diameter of the flange, contains the plurality of radially

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scalloped concave portions (36). Boaz et al. teach the use of a flexible caulking nozzle (14c) (col.1, ll. 5-16).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the flange of Jackson et al. to have the plurality of radially scalloped concave portions as taught by Zimmerman in Figure 2, and in (col.2, ll.41-46), in order to provide a flange for ease of gripping.

Further, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the nozzle of Jackson et al. and Zimmerman to be flexible, as taught by Boaz et al. in (col. 1, ll. 5-16), in order to provide a nozzle which functions to allow directionally dispensing caulking compound.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Beerens (D283,800), Nilsson (3,069,053), Ciafalo et al (6,769,578), Hansen (4,045,938), Jones et al. (2,646,906), Segatz (5,370,271), Jacobsen et al. (5,314,092), O'Sullivan (5,249,716), Heaton et al. (5,017,113), Calisto (4,382,530), Dewees et al. (3,369,714), Allen (3,481,510), Carlton (3,595,448), Dulin (2001/0048198), Ichikawa et al. (6,075,963), Simmen (5,333,760), Chao et al. (5,882,133), Sherbondy (2,821,332), Simmen (5,413,253), Discko (5,129,825), Walch et al. (6,564,970), Jeffs et al. (4,721,680), Boring et al. (5,560,521), Pree (2,785,839), Bereziat et al. (3,207,375), Okamura (6,234,348) show various type of caulking nozzles.

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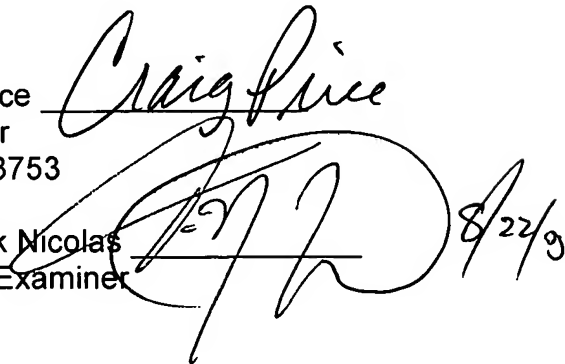
12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Craig Price whose telephone number is (571) 272-2712. The examiner can normally be reached on 8AM - 5PM M-F. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick Nicolas can be reached on (571) 272-4931. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CP

August 18, 2005

Craig Price
Examiner
Art Unit 3753

Frederick Nicolas
Primary Examiner

Handwritten signatures of Craig Price and Frederick Nicolas. The signature of Craig Price is written over the printed name. The signature of Frederick Nicolas is written over the printed name. To the right of the signatures is a handwritten date stamp "8/22/05".